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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/848,838

05/18/2004

Raymond J. Martin

MAT 3J5

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23581 7590 11/09/2009  
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EXAMINER

SUTHERS, DOUGLAS JOHN

ART UNIT

PAPER NUMBER

2614

MAIL DATE

DELIVERY MODE

11/09/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/848,838	<b>Applicant(s)</b> MARTIN ET AL.	
	<b>Examiner</b> Douglas J. Suthers	<b>Art Unit</b> 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 20 and 47-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20 and 47-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 20, 47 and 48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 20, in the phrase “when **a** first control signal is produced” it is unclear if the first control signal is the same as above. Most likely this should read “when **the** first control signal is produced”. Similar changes should be made to the second control signal.

Claims 47 and 48 are rejected as being dependent on the above.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20 and 47-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hata (US 5402702).

Regarding claim 20, Hata discloses a toy comprising:

a body (all components of figures 15);

a sound receiver (figure 15A, item 41) mounted in the body and adapted to receive sounds in a first sound frequency range;

a first sound analyzer (60B) coupled to the signal receiver and adapted to produce a first control signal (output of 45) indicative of sound received in a second sound frequency range;

a second analyzer coupled (60H) to the signal receiver and adapted to produce a second control signal (output of 45) indicative of signals received in a third frequency range above about 5 kHz;

wherein the first and second sound analyzers are also adapted to suppress frequencies outside their intended range and thereby reduce the likelihood that sounds having suppressed frequencies will result in both first and second control signals being produced (filters suppress frequencies outside each different range selected by filters 60, column 6 lines 6-54);

a first output device (48) mounted in the body, responsive to the first control signal, and adapted to produce a corresponding first sensible action (lighting of corresponding LED 48) when a first control signal is produced; and

a second output device (48 of 60H) mounted in the body, responsive to the second control signal, and adapted to produce a second sensible action (lighting of corresponding LED 48) when a second control signal is produced.

Although Hata does is silent about the exact frequencies isolated by the band pass filters it would have been obvious to the designer that any sub range of the audible frequency range (20Hz to 20Khz per column 7 line 13) could be used. The motivation to do so would have been to allow for isolating portions of the audio that are of interest to the designer while rejecting those portions not of interest (such as drums or vocal column 7 line 8 and 9). Therefore at the time of invention, it would have been obvious to one of ordinary skill in the art to detect and reject the frequency ranges as claimed.

Regarding claim 47, Hata discloses in which the body includes at least one movable part (switch of 47), and in which the sensible action includes one or more of illuminating a light (48), producing a sound, and moving the at least one movable part.

Regarding claim 48, Hata discloses wherein the suppressed frequencies and the second sound frequency range both include frequencies of normal human speech (given claim 20 the suppressed frequencies are 1.5kHz to 7kHz and the second sound

frequency range is below 2kHz. Normal human speech could be generally categorized as between 100Hz-8kHz which falls in those ranges).

Regarding claim 49, Hata discloses a method of operating a toy having a body (all components of figures 15), the method comprising:

receiving in the body sounds in a first sound frequency range including sounds having frequencies between at least about 1 kHz and 10 kHz (full range received by 41);

producing a first control signal indicative of sound received in a second sound frequency range below a particular frequency (60L)

producing a second control signal indicative of sound received in a third sound frequency range above a particular frequency (60H);

reducing the likelihood of producing both first and second control signals by suppressing frequencies outside the above frequency ranges (filters 60 reject all but frequencies of interest);

producing a first sensible action in the body upon production of the first control signal (lighting of corresponding LED 48); and

producing a second sensible action in the body upon production of the second control signal (lighting of corresponding LED 48).

Although Hata does is silent about the exact frequencies isolated by the band pass filters it would have been obvious to the designer that any sub range of the audible frequency range (20Hz to 20Khz per column 7 line 13) could be used. The motivation

to do so would have been to allow for isolating portions of the audio that are of interest to the designer while rejecting those portions not of interest (such as drums or vocal column 7 line 8 and 9). Therefore at the time of invention, it would have been obvious to one of ordinary skill in the art to detect and reject the frequency ranges as claimed.

Regarding claim 50, Hata discloses in which the body includes at least one movable part (switch of 47), and in which producing a sensible action includes one or more of illuminating a light (48), producing a sound, and moving the at least one movable part.

### ***Response to Arguments***

Applicant's arguments filed July 7<sup>th</sup>, 2009 have been fully considered but they are not persuasive.

Regarding applicant's arguments, the examiner maintains that the filters 60 do suppress frequencies outside their desired ranges and therefor read on the amended claim language.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas J. Suthers whose telephone number is (571)272-0563. The examiner can normally be reached on Monday-Friday 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Douglas J Suthers/  
Examiner, Art Unit 2615

/Vivian Chin/  
Supervisory Patent Examiner, Art Unit 2614